SIDEK HJ. MUHAMAD & ORS.

v.

THE GOVERNMENT OF THE STATE OF PERAK & ORS.

FEDERAL COURT, IPOH
RAJA AZLAN SHAH CJ (MALAYA)
SALLEH ABAS FJ
EUSOFFE ABDOOLCADER J
[APPEAL NO. 115 OF 1981]
1 FEBRUARY 1982

LAND LAW: *Squatters - Illegal occupation of state land - Whether squatters have any right either in law or in equity - Discretion of State Government to alienate state land - Sections 48, 78, 341 of National Land Code - Whether owner obliged to seek redress from Court for eviction - "Bernama" - Whether Government agency - Whether articles binds the Government - Order 18 r. 19 Rules of the High Court 1980 - Application to strike out writ.*

This was an appeal against the decision of the High Court, Ipoh which struck out the appellants' action for a declaration, *inter alia* that they were entitled in law and in equity to be in possession of their respective lots in the state land originally pioneered, opened up and occupied by them. The respondents applied under O. 18 rule 19 for the action to be struck out on the grounds that the appellants were squatters and that it was within the sole discretion of the State Government to alienate State land.

In 1950 the appellants, numbering 377, came to Teluk Anson (now Teluk Intan) from Kedah, North Perak and Selangor and opened up a large part of a jungle area in Mukim of Bandar, Teluk Anson and occupied an area of what is known as Kawasan Block D in a scheme known as Rancangan Seberang Perak Padi Cultivation Scheme, Kampong Gajah, in the District of Perak Tengah. They were squatters.

Between 1950 and 1970 more and more settlers came and settled in the area and as the matter became intolerable, the State Government planned to organise the settlement of these squatters. It divided the area into four blocks by allotting Blocks A and B to the settlers from the State and Block C to FELCRA (Federal Land Consolidated and Rehabilitation Authority). The 360 settlers who were in occupation of Block C were re-settled in part of Block D where the appellants were already in occupation and the appellants became unhappy with the new situation.

However, a meeting was held in January, 1977 between the pioneer settlers in Blocks C and D (including the appellants) and government officials including the District Officer, Perak Tengah, to solve the problem arising from the re-settling of the 360 Block C settlers in Block D. It was alleged that the District Officer had promised that each settler family would be given 3 acres of padi land subject to successful interviews to be held by the District Land Committee to which the settlers wanted 5 acres. During this time Bernama was quoted as the source of an article in the Utusan Melayu issue of 15 January 1977, that the State Government proposed to open up about 10,000 acres of land at Seberang Perak to be developed by more than 1,000 persons who illegally pioneered the land in that area. Also, the State Director of Lands and Mines, then had said that each pioneer settler family would be given 5 acres of padi land and this was reported in Utusan Zaman in an article dated 23 January 1977. It was further alleged that some settlers who were successful in the interviews were given 3 acre lots in Block D; some others, including the appellants who were unsuccessful were given notice to stop work and to vacate the area. The appellants then filed the writ.

The appellants sought to justify or excuse their conduct by referring to the article attributed to Bernama in the Utusan Melayu and argued that the State government had promised them and therefore the government should not renege on the promise given to them. They said Bernama is a government agency and therefore what it says *via* the newspaper binds the government.

The respondents said that the appellants were not entitled in law in equity to compel the State Government to give State land to them as they were and are in illegal occupation.

Held:

[1] It is clear beyond doubt that the appellants cannot succeed in their action because they are squatters. Squatters have no right either in law or in equity. It does not lie in their mouths to assert that they used and occupied the land as squatters.

[2] Squatters go into possession by, or as a result of illegal occupation of State land. Illegal occupation of State land is an offence under s. 425 of the National Land Code. It is well established that a Court of equity will never assist squatters to resist an order of possession illegally acquired; it will never intervene in aid of wrong-doers. What equitable right or interest can be conjured up for the squatters who have illegally occupied State land?

[3] There is no provision in the Pertubohan Berita Nasional Malaysia Act, 1967 in categorical terms to what Bernama says *via* the newspaper. The State Director of Lands and Mines has no authority to bind the government to alienate State land to the settlers as a formal resolution of the State Authority is necessary. The want of authority was clearly pleaded, and is a formidable obstacle to any contention that the appellants' claim lay in estoppel.

[Appeal dismissed with costs.]

Per: Observation on action against squatters.

> The owner is not obliged to go to the Courts to obtain an order of possession. He is entitled, if he so wishes, to take the remedy into his own hands. He can go in himself and turn them out without the aid of the Courts of law. He can even use force, so long as he uses no more force than is reasonably necessary. He will not then be liable either criminally or civilly. This however is not to be encouraged because of the disturbance which might follow but the legality of it is beyond question.

Cases referred to:

McPhail v. Persons Unknown [1973] 1 Ch 447
Grafton v. Griffin 39 ER 130
Hemmings v. Stoke Poges Golf Club [1920] 1 KB 720
Aglionby v. Cohen [1955] 1 QB 558
Doe d. Rochester (Bp.) v. Bridges 109 ER 1001

Legislation referred to:

National Land Code Act 56/1965, ss. 48, 78, 341, 425
Pertubohan Berita Nasional Malaysia Act 1967, Bernama Act 1967 s. 4
Rules of the High Court 1980, O. 18 r. 19

For the appellants - Raja Mohamed Redzuan
For the respondents - Haider Mohamad Noor, State Legal Adviser, Perak

JUDGMENT

Raja Azlan Shah CJ (Malaya):

In 1950 the appellants, numbering 377, came to Teluk Anson (now Teluk Intan) from Kedah, North Perak and Selangor and opened up a large part of a jungle area in the Mukim of Bandar, Teluk Anson. They were squatters. They now occupy an area of what is known as Kawasan Block D in a scheme known as Rancangan Seberang Perak Padi Cultivation Scheme, Kampong Gajah, in the district of Perak Tengah. Between 1950 and 1970 more and more settlers came and settled in the area. The matter became intolerable. So the State Government put up a plan to organise the settlement of these squatters. It divided the area into four blocks. Blocks A and B were allotted to the local settlers - settlers from the State itself. Block C is given to FELCRA (Federal Land Consolidation and Rehabilitation Authority). Only ex-servicemen and youths were eligible There were already 360 settlers who had occupied the land in Block C. They were re-settled in another area - part of Block D where the appellants were already in occupation. Naturally the appellants were not happy with the new situation.

It is alleged that as a result of a meeting held in January 1977 between the pioneer settlers in Blocks C and D (including the appellants) and government officials including the District Officer, Perak Tengah, to find a solution to the problem arising from the resettling of the 360 Block C settlers in Block D, the District Officer promised that each settler family would be given three acres of padi land subject to successful interviews to be held by the District Land Committee. The settlers did not agree to 3 acres; they wanted 5 acres. They complained to their Member of Parliament who, it would appear, could not do much for them. To make matters worse, Bernama was quoted as the source of an article in the *Utusan Melayu* issue of 15 January 1977 that the State Government proposed to open up about 10,000 acres of land at Seberang Perak to be developed by more than 1,000 persons who illegally pioneered the land in that area, and that the State Director of Lands and Mines, Haji Yang Rashidi b. Maasom, had said that each pioneer settler family would be given 5 acres of padi land. *Utusan Zaman* in an article dated 23 January 1977 also carried the same story.

It is further alleged that interviews were held subsequently; some settlers were successful and were given 3 acre lots in Block D; some others, including the appellants, were not successful. The appellants were given notice to stop work and to vacate the area.

They then filed a writ, asking for a declaration *inter alia*, that they are entitled in law and in equity to be in possession of their respective lots in Block D originally pioneered, opened up and occupied by them.

The respondents say that the appellants are not entitled in law and in equity to compel the State Government to give State land to them as they were and are in illegal occupation of State land. They admit that there was a meeting between the District Officer and the settlers in January 1977 but it was purely to explain to the settlers of the State Government's intention to allocate to each family an area of 3 acres subject to successful interviews. They deny that the articles in the newspapers were published by or under their authority or their servants or authorised agents.

The respondents applied under O. 18 r. 19, to strike out the appellants' action on the grounds that they are squatters, and that it is within the sole discretion of the State Government to alienate State land.

The learned Judge upheld the application. He said this:

> From the facts as disclosed in the statement of claim, the defence and the affidavits, it is clear to me that the plaintiffs have no rights against the State Government. Being mere trespassers they cannot claim title as against the State Government. Even though they have occupied the land for a number of years but they cannot acquire any title by adverse possession. Under s. 48 of the National Land Code, it is clearly provided that no title to State land shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever.

In our opinion there is one issue which lies at the heart of this case. It is whether the appellants have a cause of action against the respondents. The answer is obvious. It is clear beyond doubt that they cannot succeed because they are squatters. Squatters have no right either in law or in equity. (See *McPhail v. Persons Unknown CA* [1973] 1 Ch 447, 456). It does not lie in their mouths to assert that they used and occupied the land as squatters.

Their position under the National Land Code is not dissimilar. Section 48 of the Code is against them. It says that "No title to State land shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever." Section 78 of the Code is also relevant. It says that alienation of State land shall only be effected in accordance with the provisions of Chapter 3, of Part Five and Chapter 2 of Part Eleven, and notwithstanding that its alienation has been approved by the State Authority, the land remains State land until registration under the Code. Section 341 of the Code empowers the State Authority to dispossess any squatters at any time. So the limitation period does not operate against the State. What equitable right or interest can be conjured up for the squatters who have illegally occupied State land? Squatters go into possession by, or as a result of, illegal occupation of State land. Illegal occupation of State land is an offence under s. 425 of the National Land Code. It is well established that a Court of equity will never assist squatters to resist an order of possession illegally acquired; it will never intervene in aid of wrong-doers. (See *Grafton v. Griffin* 39 ER 130). We would like to say this at once about squatters. The owner is not obliged to go to the Courts to obtain an order of possession. He is entitled, if he so wishes, to take the remedy into his own hands. He can go in himself and turn them out without the aid of the Courts of law. He can even use force, so long as he uses no more force than is reasonably necessary. He will not then be liable either criminally or civilly. This however is not to be encouraged because of the disturbance which might follow but the legality of it is beyond question. The decision of the English Court of Appeal in *Hemmings v. Stoke Poges Golf Club* [1920] 1 KB 720 manifests this principle and we would also refer to the judgment of Harman J, in *Aglionby v. Cohen* [1955] 1 QB 558 in this respect regarding common law rights.

The appellants sought to justify or excuse their conduct by arguing before us, as they did before the learned Judge, that the State Government had promised them land and therefore the government should not renege on the promise given to them. They relied on the article attributed to Bernama in the *Utusan Melayu*. They say Bernama is a Government agency and therefore what it says *via* the newspaper binds the Government. We have looked at the Pertubohan Berita Nasional Malaysia Act 1967, and we cannot find anything in its provisions which state in categorical terms that what it says binds the Government. (See particularly s. 4).

Assuming what the State Director of Lands and Mines said in the *Utusan Melayu* is true, can he bind the State Government? The short answer is that he had no authority to bind the Government to alienate State land to the settlers. For this a formal resolution of the State Authority is necessary. The want of authority was clearly pleaded, and is a formidable obstacle to any contention that the appellants' claim lay in estoppel.

The only way to obtain State land is by way of the National Land Code. The case falls within the broad principle that "where an Act creates an obligation, and empowers the obligation in a specified manner, we take it as a general rule that performance cannot be enforced in any other manner": (see *Doe d. Rochester (Bp) v. Bridges* 109 ER 1001, 1006). Likewise here in the case of landless. It cannot have been intended by Parliament in enacting the National Land Code that every person who was in need of land should be able to sue the Government for it or to take the law into his own hands for the purpose. So the Courts must, for the sake of law and order, take a firm stand. We can sympathise with the plight in which the appellants find themselves. But we can go no further. They must make their appeal for help elsewhere, not to us.

The appeal is dismissed with costs.

Also found at [1982] CLJ 244